

USDOL/OALJ Reporter

[*Aiken v. Pacific Gas & Electric Co.*](#), 2000-ERA-3 (ALJ Apr. 14, 2000)

U.S. Department of Labor

Office of Administrative Law Judges
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DATE: April 14, 2000

CASE NO. 2000-ERA-00003

In the Matter of

NEIL J. AIKEN
Complainant

v.

PACIFIC GAS AND ELECTRIC COMPANY
Respondent

Appearances:

Robert C. Seldon, Esq.
A. Alene Anderson, Esq.,
For Complainant

Stephen L. Schirle, Esq.
Timothy J. Murphy, Esq.,
For Respondent

Before: ALFRED LINDEMAN
Administrative Law Judge

**RECOMMENDED DECISION AND ORDER
APPROVING SETTLEMENT AGREEMENT
AND
DISMISSING COMPLAINT WITH PREJUDICE**

This is a proceeding arising under the Energy Reorganization Act ("ERA"), 42 U.S.C. §5851, and its implementing regulations at 29 C.F.R. Part 24. On April 13, 2000, the parties submitted a duly executed "Joint Motion Requesting Approval of Settlement Agreement and Dismissal of Appeal" with prejudice. Although the Part 24 regulations do

not contain any provision relating to a dismissal of a complaint by voluntary settlement, under the Rules of Practice and Procedure for Administrative Hearings before the Office of Administrative Law Judges, 29 C.F.R. Part 18, which are controlling in the absence of a specific provision at Part 24, the parties in a proceeding before an administrative law judge may reach agreement on their own. 29 C.F.R. Part 18.9 (a)-(c).¹

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Under the terms of the instant Settlement Agreement, which was reached after the parties participated in private mediation, the Respondent agrees to pay Complainant and his attorneys stated sums in consideration of releases and discharges stated therein. With respect to Paragraph 15 of the Settlement Agreement, which provides that the parties shall keep the terms of the settlement confidential, it is noted that they have attempted to comply with applicable case law by specifically providing that the confidentiality provision does not restrict disclosure where required by law. *See McGlynn v. Pulsair, Inc.*, 93-CAA-2 (Sec'y June 28, 1993).

Having fully reviewed the Settlement Agreement in accordance with applicable precedent, I find that its terms are a fair, adequate, and reasonable settlement of the complaint.² *See Thompson v. U. S. Department of Labor*, 885 F.2d 551 (9th Cir. 1989); *Bonanno v. Stone & Weber Engineering Corp.*, 97-ERA-33 (ARB June 27, 1997).

In addition, it is noted that the parties have designated several portions of the Settlement Agreement as confidential commercial information, as defined in 29 C.F.R. Part 70.26, and thereby subject to non-disclosure under the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, which requires agencies to disclose requested documents unless they are exempt from disclosure. *See Bonanno, supra* at 2; *Klock v. Tennessee Valley Auth.*, 95-ERA-20 (ARB May 30, 1996), slip op. at 2; *Darr v. Precise Hard Chrome*, 95-CAA-6 (Sec'y May 9, 1995), slip op. at 2; *Webb v. Consolidated Edison Co.*, 93-CAA-5 (Sec'y Nov. 3, 1993), slip op. at 2. Since there is no present record evidence that any FOIA requests have been made, I find that "it would be premature to determine whether any of the exemptions in FOIA would be applicable and whether the Department of Labor would exercise its authority to claim such an exemption and withhold the requested information" and "[i]t would also be inappropriate to decide such questions in this proceeding." *Darr, supra*, slip op. at 2-3; *see also DeBose v. Carolina Power & Light Co.*, 92-ERA-14 (Sec'y Feb. 7, 1994), slip op. at 3. The Settlement Agreement and Release, however, shall be placed in a portion of the file clearly designated as confidential commercial information, which must be handled in accordance with the appropriate procedure for a FOIA request. 29 C.F.R. Part 70.26; also, *see generally Bonanno, supra* at n.1.

Accordingly, the Joint Motion of the parties is GRANTED, and it is hereby RECOMMENDED that the Settlement Agreement between Complainant Neil J. Aiken and Respondent Pacific Gas and Electric ("PG&E"), be APPROVED and that the instant complaint(s) be DISMISSED WITH PREJUDICE. It is FURTHER RECOMMENDED

that the Settlement Agreement be designated as confidential commercial information to be handled in accordance with 29 C.F.R. Part 70.26.

ALFRED LINDEMAN
Administrative Law Judge

San Francisco, California
AL:kw

NOTICE: This Recommended Decision and Order will automatically become the final order of the Secretary unless, pursuant to 29 C.F.R. § 24.8, a petition for review is timely filed with the Administrative Review Board, United States Department of Labor, Room S-4309, Frances Perkins Building, 200 Constitution Avenue, N.W., Washington, D.C. 20210. Such petition for review must be received by the Administrative Review Board within ten business days of the date of this Recommended Decision and Order, and shall be served on all parties and on the Chief Administrative Law Judge. *See* 29 C.F.R. §§ 24.8 and 24.9, as amended by 63 Fed. Reg. 6614 (1998).

[ENDNOTES]

¹ The parties must "[n]otify the administrative law judge that the parties have reached a full settlement and have agreed to dismissal of the action." 29 C.F.R. Part 18.9(c)(2). Once such notification occurs, the administrative law judge shall then issue a decision within thirty (30) days if satisfied with the agreement's form and substance. 29 C.F.R. Part 18.9(d).

² It is noted that the terms of the instant agreement include the settlement of matters arising under laws other than ERA. *See Settlement Agreement & Release* at ¶ 14. For the reasons set forth in *Poulos v. Ambassador Fuel Oil Co., Inc.*, 86-CAA- 1 (Sec'y Nov. 2, 1987), I have limited my review of the agreement to determining whether its terms are fair, adequate, and reasonable settlement of Complainant's allegation that Respondent violated ERA. *See Poulos, supra*, slip op. at 2. ("[The Secretary's] authority over settlement agreements is limited to such statutes as are within [the Secretary's] jurisdiction and is defined by the applicable statute").